IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12608 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TAHIRHUSAIN ISMATKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

TANNA ASSOCIATES for Petitioner

Mr.Joshi, Assistant GOVERNMENT PLEADER, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/06/2001

ORAL JUDGEMENT

By way of this petition, the petitioner has challenged the order dated 16.11.1999, by which the request of the petitioner for getting compassionate appointment is rejected.

It is the case of the petitioner that his father Ismatkhan Moyal was working as First Grade Jamadar in the Motor Transport Section. While in service, he died on 4.5.1998 and that he had served the State of Gujarat for 27 years. After his death, the petitioner had applied for getting compassionate appointment by giving necessary particulars about the family income etc. The said request was turned down by an order dated 16.11.1999 as well as by an order dated 7.12.1999. In the order dated 7.12.1999, it is mentioned that the income of the family of the deceased is Rs.2,768/-, which is more than the prescribed limit of Rs.2,000/-. On that ground, the prayer was rejected. While calculating the aforesaid income of Rs.2,768/-, the family pension received by the petitioner is also taken into consideration.

It is not in dispute that while calculating the aforesaid income, the Department has taken into consideration the income which the family is receiving towards family pension. This Court, in Special Civil Application No.11020 of 1993 in the case of Dilipsinh B. Rathod v. State of Gujarat, decided on 1.1.1999, has taken the view that while calculating the total income of the family of the deceased, income of pension is not required to be taken into consideration. In paragraph 3, it has been observed by this Court as under :-

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> 3. Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court in the case of C.B. Maru v. Dhanduka Nagar Panchayat, reported in 1993(2) G.L.H. 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai v. State of Gujarat and Ors., reported in 1998(1) GLH (UJ) 23. In C.B. Maru's case (supra), this Court while placing reliance in the case of Smt. Phoolwati v. Union of India and ors., reported in AIR 1991 SC

469, has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/per month and her husband had died on 15th October, 1990. In the case of C.B. Maru (Supra), the other details of income regarding Dearness Allowance, Medical Allowance, etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1,000/-. In the present case, the father of the petitioner had died in April 1991 and, in the case of C.B. Maru (Supra), the date of the death of deceased is October, 1990 and, therefore, there is hardly a difference of about six months in the date of the death. Even if 505 Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50, i.e. Rs.967.50 and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1,000/-. In any case, the fact remains that this Court has taken the view in the case of C.B. Maru, that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (Supra) this Court, while placing reliance on C.B. Maru's case (supra), has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1,000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid,

> the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1,000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date a copy of this order is served upon the respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this Order and for that purpose, direct service is permitted.
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> ... ..."

In that view of the matter, the matter is now again required to be sent back to the State Government for arriving at the correct figure of the income of the family members of the deceased. While calculating that income, the pension amount received by the family members of the deceased should not be taken into consideration in view of the view taken by this Court in the aforesaid decision. The petition is accordingly allowed. The impugned order is quashed and set aside. The respondents are directed to take fresh decision in the matter as

early as possible, preferably on or before 30th September, 2001, as per the directions and observations made hereinabove. The writ of this order to be sent forthwith. Rule is made absolute accordingly, with no order as to costs.

21st June, 2001 (P.B. Majmudar, J.)

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(apj)